

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAR 26 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JOHNNIE CHANDLER,

Appellant.

2 CA-CR 2006-0071

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052744

Honorable Ted B. Borek, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Alan L. Amann

Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Kristine Maish

Tucson
Attorneys for Appellant

ESPINOSA, Judge.

¶1 After a jury trial, Johnnie Chandler was convicted of possession of a narcotic drug, a class four felony, and possession of drug paraphernalia, a class six felony. The trial

court suspended the imposition of sentence on both counts and placed Chandler on probation for two years. On appeal, Chandler contends the trial court erroneously denied his motion to suppress evidence found on his person and in the vehicle he was driving on the night of his arrest. We affirm.

¶2 In reviewing the denial of a motion to suppress evidence, we consider only that evidence adduced at the suppression hearing and view the facts in a light most favorable to upholding the trial court's ruling. *State v. May*, 210 Ariz. 452, ¶ 4, 112 P.3d 39, 41 (App. 2005). The ruling itself, however, is a conclusion of law we review *de novo*. *State v. Smith*, 208 Ariz. 20, ¶ 6, 90 P.3d 221, 223 (App. 2004).

¶3 On June 19, 2005, Bunnie Saunders called the Tucson Police Department (TPD) to report a domestic violence incident. Officer Richard Smith responded to the call. Smith testified that during the course of their conversation about the domestic dispute, Saunders also told him that Chandler, whom she had been regularly permitting to use her car, now had "refused" to return the car keys to her. Smith asked whether "she wanted to make a report," and Saunders said yes. Saunders did not want Chandler to be prosecuted, but she did want the police to help her get the car back. Saunders testified that she had, in fact, asked for such assistance, but denied telling anyone that Chandler had "stolen" the car or using the word "refused."

¶4 On the same day he had spoken with Saunders, Smith reported the information to "TWX," a division of TPD staffed by civilian employees responsible for entering data

concerning missing persons or property, including status information on vehicles to communicate to officers that they have been stolen or that officers should “attempt to locate” (ATL) them. This information is shared with the National Crime Information Center’s computerized index known as NCIC. On the police report Smith created, he described the incident as “Motor Vehicle Theft” and “Embezzlement” because he believed those to be the most appropriate codes available to him from the uniform crime report (UCR) codes he was required to enter.

¶5 However, because Saunders did not want to have the theft prosecuted, Smith’s report later came to the attention of Detective Mitch Vipond. Vipond instructed a TWX operator to remove any vehicle theft information from the national system and to change the nature of the local ATL information to communicate to officers only that the car should be stopped, the driver’s identity determined, and the vehicle returned to its owner. Vipond testified TPD makes such changes as a matter of policy when a victim of vehicle theft does not wish to pursue prosecution. He explained that officers “point guns at people” when stopping stolen vehicles and, to minimize the liability risks associated with such stops, TPD’s legal advisor “prefer[s] that we be a little friendlier” in those cases where the victim does not seek prosecution. Vipond notified TWX of the cancellation on the afternoon of June 22, 2005.

¶6 That evening, while TPD Sergeant Michael Hammarstrom was conducting unrelated surveillance of a convenience store, Chandler pulled into the parking lot driving

Saunders's car. Another person walked toward the car, leaned into the passenger side, and conversed with Chandler. Because the unmarked vehicle from which Hammarstrom was observing this scene was not equipped with a police computer, Hammarstrom contacted another officer in the area and asked him to check the license plate number of the vehicle driven by Chandler. That officer, Michael Kishbaugh, did so and learned the vehicle was listed as stolen.

¶7 Acting on that information, Hammarstrom, Kishbaugh, and other officers in the area swiftly converged on the scene, and Kishbaugh ordered Chandler to get out of the vehicle, having first drawn his firearm. When Chandler opened the driver's side door, Kishbaugh could see part of a weapon, later determined to be a BB gun. Chandler continually cooperated with Kishbaugh's armed demands and was soon handcuffed while lying prone on the ground near his vehicle. Although the precise timeline of events is somewhat unclear, within minutes, the officers had learned Chandler had a suspended driver's license and had confirmed that the vehicle had been reported stolen. In searching the vehicle and Chandler's person, evidence Chandler claims should have been suppressed was discovered.

¶8 Below, as on appeal, Chandler argued his rights under the Fourth Amendment to the United States Constitution were violated by the stop, arrest, and seizure of evidence that flowed from the entry of inaccurate information the police department had entered in the TWX system describing Saunders's car as stolen. He contends the trial court erroneously

refused to suppress the seized evidence and we should therefore reverse his convictions. However, we disagree with Chandler’s fundamental premise that TPD employees entered incorrect information in the TWX system and therefore his subsequent stop and arrest were unsupported by reasonable suspicion.

¶9 The trial court found the facts Saunders had relayed to Smith on June 19 “show[ed] a violation of unlawful use of [a] means of transportation under A.R.S. [§] 13-1803.” We agree and note those facts also gave rise to a reasonable suspicion that Chandler had committed theft of a means of transportation in violation of A.R.S. § 13-1814. Specifically, Smith’s testimony supports a conclusion that Saunders reported Chandler had refused to return the keys to her car after she had allowed him to use it for a period of time to drive her to and from work. Put another way, according to Smith’s testimony, Saunders told him Chandler had “knowingly . . . [c]onvert[ed] for an unauthorized term or use another person’s means of transportation that [was] entrusted to or placed in [his] possession for a limited, authorized term or use.” § 13-1814(A)(2). Smith’s testimony that he did not intend a felony stop to result from the information he had given TWX, and TPD’s policy reasons for typically treating cases like this one in a “friendlier” manner notwithstanding, the information available justified a reasonable suspicion that a crime had been committed and that Chandler had committed it.

¶10 An investigative stop is lawful “if the officer has articulable, reasonable suspicion, based on the totality of circumstances, that the suspect is involved in criminal

activity.” *State v. Box*, 205 Ariz. 492, ¶ 16, 73 P.3d 623, 628 (App. 2003); *see also United States v. Arvizu*, 534 U.S. 266, 273-74, 122 S. Ct. 744, 750-51 (2002); *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1879-80 (1968). Accordingly, both the information that apparently had remained in the computer system on the night of June 22 and upon which the officers acted that evening justified an investigative stop of the vehicle driven by Chandler. That Chandler was then handcuffed and detained did not convert the stop into a *de facto* arrest. *See State v. Blackmore*, 186 Ariz. 630, 633, 925 P.2d 1347, 1350 (1996). In addition, the fact that before Chandler had even left the vehicle, Kishbaugh had seen what he reasonably believed to be a gun stored on the driver’s side door only underscored the validity of the brief intrusions at issue. *See id.*

¶11 An arrest is justified where probable cause exists to believe the person to be arrested has committed an offense. *State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000). When the collective knowledge of law enforcement officers is employed, this belief must be based on “‘reasonably trustworthy information of facts and circumstances which are sufficient in themselves to lead a reasonable [person]’” to hold the belief. *State v. Aleman*, 210 Ariz. 232, ¶ 15, 109 P.3d 571, 576 (App. 2005), *quoting State v. Richards*, 110 Ariz. 290, 291, 518 P.2d 113, 114 (1974) (alteration in *Aleman*).

¶12 That Saunders had not relayed to TPD that subsequent to making the July 19 report, she had apparently renewed Chandler’s permission to use her vehicle does not alter what the police knew on the evening of Chandler’s detention and subsequent arrest. The

information Saunders had relayed and that the police confirmed at the scene showed violations of criminal statutes; thus, it initially created probable cause to believe Chandler had committed or was committing those offenses. In addition, the police discovered within minutes of Chandler's detention that he had been driving on a suspended license, which provided further justification for an arrest and, consequently, the searches of his person and the vehicle incident to that arrest. *See State v. Dean*, 206 Ariz. 158, ¶ 30, 76 P.3d 429, 437 (2003).

¶13 Finding no error in the trial court's denial of the motion to suppress evidence, we affirm Chandler's convictions as well as the order suspending the imposition of sentence and placing him on probation.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge